

**Wichita Citizen Review Board Minutes (Corrected)**

**June 23, 2022**

**4:00 PM**

**City Council First Floor Board Room**

**455 N. Main St, Wichita, KS 67202**

**Present:** Jay Fowler (Chair), Riccardo Harris, Sharon Ailslieger, Dennis Bender, Jamie Lopez, Shaun Rojas, Twila Puritty

**City of Wichita Representatives Present:** Deputy Chief Chester Pinkston, Captain Travis Easter, Lieutenant Robert Reichenberger, Lieutenant Scott Moon, Lieutenant Jason Bartel, Jennifer Magana, Sharon Dickgrafe, Michelle Davis, Keely Bean, Zachary Kester

**Sedgwick County Representatives Present:** District Attorney Marc Bennett

**1. Call to Order – Chairperson Fowler**

The meeting was called to order at 4:04 P.M.

**2. Approval of May 26<sup>th</sup> Minutes – Chairperson J. Fowler**

Bender moved to approve the May 26<sup>th</sup> minutes as written, seconded by Lopez. The Board unanimously approved the May 26<sup>th</sup> minutes as written.

**3. Public Agenda – 15 minutes set aside for this portion of the meeting**

Before starting the public agenda Fowler introduced Twila Puritty as the newest appointee to the Board.

There was no public comment.

**4. Staff Report Update – Captain T. Easter**

Captain Easter started with the stats for year-to-date complaints received. There have been 125 external complaints received, 100 internal complaints received, totaling 225 total complaints received. The most common complaint was 75 comply with policy, followed by 52 rude conduct, and 35 complete and thorough investigation. Next he covered new complaints received between May 1<sup>st</sup> and May 31<sup>st</sup>. There were 22 new external complaints, 16 new internal complaints, totaling 38 new complaints received. The complaints are spread out throughout the Department. The most common complaints were handling of evidence/personal property and comply with policy.

Puritty asked if the spreadsheets showed all the Bureau's in the Department. Captain Easter answered that they do show all of the Bureau's in the Department.

Captain Easter then continued with the stats for the closed complaints between May 1<sup>st</sup> and May 31<sup>st</sup>. There were 19 closed external complaints, 20 closed internal complaints, totaling 39 closed complaints. 48 Department employees were investigated. 9 were exonerated, 2 received non-discipline education, 1 was not sustained, 1 resigned under investigation, and 20 were unfounded. There was a total of 17 non-discipline education given. The Department has a total of 835 total employees. The most common complaint was comply with policy.

Fowler said that the spreadsheet shows that the Department has 661 sworn officers, Fowler asked if the Department was low on officers. Captain Easter answered that the Department is

low on officers. Deputy Chief Pinkston added that the Department is authorized just over 700 officers, not all of those are assigned to the Field Services Division.

Fowler then asked if the Board would like to pull any of the closed complaints for review. Fowler continued by saying that the Board had adopted a new protocol for the identification of new complaints and the nature of the allegations. He asked Captain Easter if he could advise the Board on the essence of the two new conduct unbecoming complaints. Fowler said that at the last meeting there was a spreadsheet with new complaints and a brief summary. Captain Easter said that a spreadsheet of new complaints and descriptions has not been provided since he took over as the advisor to the Board. Fowler said that he was under the impression that, with the new protocol that the Board had adopted, Staff would provide a print out of new complaints with a brief summary of the complaint. Fowler continued that he did not know if this spreadsheet needed to be provided at the meetings as it is monitoring tool. Keely Bean explained that the Department is keeping a running track of conduct unbecoming complaints for the Board and that once those complaints that the Department can provide that information to the Board. Fowler explained that the protocol was meant to provide the Board with advanced notice of complaints, not for review purposes but for identification purposes. Captain Easter said that a spreadsheet like that exists and can be provided to the Board.

Puritty said that there were so many cases for review and asked if there was a way for cases to be pre-screened by two to three people, who would then say whether a case should be reviewed by the full board. Fowler answered that the Board tends to review cases that involve excessive force or racial discrimination. Fowler continued by saying that the Chief of Police and citizens can identify cases for the Board to review. He further explained that there are logistical problems with doing a lot of pre-screening as the Department has to put together packages for each complaint that the Board chooses to review. Bender asked if the Board could pre-screen without being a full board in executive session. Fowler said that he did not see why they couldn't. Fowler said that there could be no more than three members for these pre-screenings and that they might be able to do it over a Zoom call. Puritty said that if the Board is focused on racism or excessive force then it leaves room for them to miss something. Fowler explained that Interim Chief Moore has made a commitment to provide more information to the Board in the closed cases summaries. Fowler said that there is some benefit in the Board pulling cases other than excessive force and racial discrimination. Puritty said that would advocate for a pre-screening process. Puritty was concerned with the length of time that it took to close some complaints. Fowler said that he does not believe that typical HR style of complaints are the focus on the Board. Puritty said that something might be hidden underneath a typical HR style of complaint. Fowler said that he is willing to consider a screening committee if it can be staffed, but it would have to be done in a way that is not too burdensome. Puritty said that she understands that staffing is a concern but she said that if the Board is a priority for the Department and the City then she feels that the additional effort shouldn't be that burdensome.

Bender said that there was one open complaint from 2019 (19PSB-3031) and two open complaints from 2020 (20PSB-2684 and 20PSB-3398), he asked if those complaints involved litigation and that is why they have not been closed yet. Captain Easter said that typically that would mean that there is something like a criminal review, this is typically what slows down an investigation. The internal investigation can not take place until after the criminal investigation has concluded. Captain Easter said that he would have to speak with Professional Standards about the specific complaints to give Bender an answer. Bender asked that Captain Easter look into these open complaints for him.

## **5. Discussion – Brady/Giglio Policy – Board Members, District Attorney Marc Bennett, & City Attorney Sharon Dickgraft**

Fowler explained that at the last meeting the Board had made a recommendation to have the prosecutors come and talk with them during their continued discussion on Brady/Giglio. Both Sharon Dickgrafe and Marc Bennett came to the meeting to speak with the Board about Brady Giglio. Fowler asked Marc Bennett to come up first.

Marc Bennett, the Sedgwick County District Attorney, came forward and provided the Board a summary of the case law that controls the issue of Brady/Giglio. The fundamental construct of this notion is that the prosecutor must provide all evidence that helps the defense to the defendants attorney. This usually comes in the form of exculpatory evidence, evidence that speaks to the innocence or mitigates the guilt of the defendant, or impeachment evidence, evidence that would allow the defense to impeach the prosecutions case. What can be used as impeachment evidence is guided by state law, this means that Kansas is different then other states. Bennett explained that Kansas case law basically says that exculpatory evidence and impeachment evidence are one and the same, this was determined under State vs. Warrior. Bennett further explained that this decision made exculpatory evidence and impeachment evidence are indistinguishable in terms of the prosecutor's obligation to provide them to the defense. Bennett said that bias, reputation, credibility, truthfulness, prior convictions for false statements or dishonesty, and promises of benefit can all be impeachment evidence. Bennett continued by saying that promises of benefit comes specifically from the Giglio case. Bennett explained that the prosecution is responsible for disclosing all exculpatory and impeachment evidence even if the prosecutor, that is presenting the case, is not aware of the evidence's existence. The prosecutor is deemed to have imputed knowledge from all other prosecutors and state agents, this includes all law enforcement. Bennett explained that Brady is the decision by the Supreme Court that says that the State is obliged, under the Constitution, to provide all exculpatory and impeachment evidence to the defense. Further cases have come about since the Supreme Courts ruling that have clarified and added additional evidence that must be provided. Bennett said that there are still gray areas in the law, but the fact that the prosecutor does not know of the existence of evidence is not an excuse for failing to share evidence with the defense. Personnel files are included in evidence that must be provided to the defense, if the personnel files include exculpatory or impeachable evidence. Bennett gave a recent example from Douglas County Kansas that shows how imputed knowledge can be used to dismiss a case. Bennett said that all prosecutors are back to sitting down with the Department every month to discuss Brady/Giglio issues and concerns. This meeting has been going on for a long time and was put on hold due to COVID, but they are back to meeting every month again. Fowler asked if the meeting is held to discuss pending cases or for officers that are identified as having an issue. Bennett answered that for him he is concerned with every officer because of his high case load. He continued by saying the federal prosecutors have the luxury of a smaller case load so they are only concerned with the officers that were endorsed to their cases. Bennett explained that when a detective presents a case to the prosecutor that they supply a list of everyone that has been involved with the case and the prosecutor will then endorse all of these individuals to potentially be called as witnesses. Bennett says that he speaks with the Professional Standards (PSB) about what open cases they have against officers, he then asks what has been resolved since the previous meeting. Bennett explained that when the Department tells him of an officer being sustained for a violation of veracity, racial bias or something along those lines then that officer will be added to the district attorney's records management system (RMS). This RMS will flag cases where that officer is an endorsed witness and automatically generates a letter to the defense attorney letting them know that there is an officer with a Brady/Giglio issue endorsed on the case. Fowler asked if there was a sunset provision to the list. Bennett answered that he does not have one, but that the federal rules of evidence talks about a ten year sunset provision. He continued by saying that Kansas has fairly draconian rules regarding impeachment information, for example juvenile adjudications can be

used against witnesses. Bennett said that he believes that there should be a sunset, but he has to go by Kansas law which does not give a sunset. Fowler said that he has seen situations of judges overrule questions about an event in a person's history saying that it was so long ago that it is no longer relevant. Bennett said that he doesn't have the ability to make that distinction as he is obligated to disclose all impeachment evidence and the judge will have to decide if the evidence is admissible at trial. Bennett said that he does not choose whether or not to charge cases based on an officer having a juvenile adjudication, but if that officer has been found to be racially biased this would give him pause. Puritty asked how Bennett vets the list of people that have touched a case. Bennett explained that around 2007 there was a meeting between the district attorney and Professional Standards to review all of the Department's personnel files. Bennett explained that this took the better part of a year or two and it is used as the baseline. By 2014 Bennett formalized a written policy to have monthly meetings with PSB to keep abreast of all open and resolved investigations in the Department. Puritty asked if there was a way for something to happen that Bennett wouldn't know about. Bennett answered that he has every reason to believe that the Department will be forthcoming with any allegations made against officers. Puritty then asked if Bennett has experienced any difference from Chief of Police to Chief of Police. Bennett said that there have been differences in styles and personalities but he has not received any objections to turning this information over to his office. Bennett explained that this is not a given that some prosecutors around the country are experiencing issues receiving this type of information from their local law enforcement. Fowler asked what the frequency of having to make a disclosure was. Bennett answered that he would have to go back and look but it is not infrequent. Fowler then asked how often the obligation to disclose or the disclosure has caused Bennett not to prosecute or believe that there will be an issue with the prosecution. Bennett answered that if he knows going in to a case that there is far less likely to have an issue, but it is harder if he does not know about an issue. Bennett further explained that the hardest part is going back to adjudicated or pending cases and determining if they are worth pursuing with the new information about officer misconduct. He said that he is given prosecutorial discretion on whether or not to pursue a case. Bennett said that with the recent text case he hired two retired judges to come in and review cases and tell him if this new information would affect their faith in the convictions.

Fowler then asked Sharon Dickgrafe to come up and speak on how the city law department handles this issue. Dickgrafe said that she does not have a lot that is different from Bennett on how Brady/Giglio is interpreted. She said that the big difference is the process as most of the charges are police laid charges instead of prosecutor laid charges. She explained that determining what officer filed the case can be challenging. She continued by saying that they have gotten a new computer system that allows them to note that there is a concern with a particular officer and a disclosure needs to be made. She feels that the new computer system will greatly improve the timeliness of disclosures to the defense. Puritty asked for clarification on what was meant by an officer filing a case. Dickgrafe explained that her office does not review cases pre-filing, officers will issue citations or arrest individuals. Once the case appears on a court docket then the case is reviewed and all information that is relevant is provided to the defendant. Puritty asked if there was a list of officers that would never be asked to testify and if a list exists if it would be available under the Kansas Open Records Act (KORA). Dickgrafe answered that a list would not be available based on KORA, as it would be a work product and information that they have in their prosecution file to utilize. Puritty asked how the community would know if someone was added to this list. Fowler said that it would have to be a determination if there was an involving racial bias or dishonesty. Dickgrafe agreed that this is how someone would be added to this list. Fowler asked if the Department takes Brady/Giglio into consideration with the assignment of officers. Dickgrafe answered that she would have to defer to the police department. Deputy Chief Pinkston said that this was a difficult question to

answer without specific parameters, but in all probability someone that was put on the Brady/Giglio list would not retain employment with the Wichita Police Department. Fowler said that on one point there was a policy that said that, but it was changed. Pinkston said that at one point there was a policy but the problem with the policy is that it was just implemented without vetted. Pinkston continued by saying that if you consider what it takes to be Brady/Giglio, he does not recall any officer with a veracity issue that was not terminated. Fowler said that he recognizes there has to be a scale on how you handle Brady/Giglio issues. Fowler said that it sounds like there is not a Brady/Giglio list with the Department, but the prosecutor's offices have a list. Pinkston said to the best of his knowledge the Department does not have a Brady/Giglio list. Puritty asked who attends the meeting with the prosecutors. Pinkston explained that over time it has changed. Right now it is the PSB investigator, executive officer, and right now a Deputy Chief is included. Lopez asked when this changed and why. Pinkston answered that there was a period of time that they were not meeting in person due to COVID and since going back to meeting in person a Deputy Chief has attended. Pinkston said that for further clarification on why a Deputy Chief was included they would have to ask Interim Chief Moore. Lopez asked for clarification on the latitude that is used when determining how the law was interpreted. Dickgraft explained that they err on the side of disclosure and let the judge determine what will be admissible. Puritty asked if the same Deputy Chief always attends the meeting with the prosecutors. Pinkston answered yes for at least the last couple of meetings. Puritty said that she was stunned that Pinkston said that anyone who was subject to Brady/Giglio would be terminated. Pinkston explained that if an officer was arrested for DUI or disorderly conduct and took a diversion that it is possible that they would not be terminated, but it is also possible that the prosecution would have to disclose this. Puritty said that there are a number of complaints with alleged bias that resulted in coaching and mentoring, she asked if this was disclosable. Pinkston answered that until recently he is not aware of any sustained allegations of bias, but anyone that has been sustained for veracity has been terminated or they have resigned under investigation.

## **6. Executive Staff – Citizen Review Board Members**

Fowler moved to recess into executive session for at least 50 minutes to discuss the issuance of a report in reference to 22PSB-1460 and 20PSB-3483, for the purpose of addressing personnel matters of non-elected personnel and to protect privacy interests of individuals that may be identified. Request passed unanimously by all Board Members. Return no earlier than 6:00 P.M. Began at 5:09 P.M.

Returned at 6:00 P.M. The Board takes no action and makes no recommendations regarding their review of 20PSB-3483 and pushed the review of 22PSB-1460 to the next meeting.

## **7. New Business – Chairperson J. Fowler**

Fowler said that the next major agenda item for the July meeting should be inviting the Chief of Police and someone from the City Manager's office to attend to discuss their response to the Board's report.

Aillsieger said that if she is not reappointed that she wanted to express that she has enjoyed her time on the Board. Fowler said that it was unknown about any further appointments to the Board. He continued by saying that the City Manger has made all of his appointments, but the City Council has not made all of their appointments.

Puritty asked if the Board could revisit a policy of pre-screening complaints for review. She volunteered to be one of the three board members to pre-screen complaints. Fowler asked her

to draw up a one paragraph summary on how the Board would pre-screen complaints. Puritty said that she is so new to the Board she doesn't really know what is appropriate. Fowler asked when the Department finishes the closed complaint spreadsheet that is provided to the Board. Captain Easter answered that it depends when all of the redactions are done and approved. Easter continued by saying that the Department could work on getting to the Board earlier for review. Fowler said that if the Board can get the spreadsheet two weeks in advance of a meeting then they could schedule a Zoom meeting to pre-screen the complaints. Easter explained that the problem with this is that he would need time to gather the information about the complaints that the Board would like further information on. Fowler asked if the spreadsheet that the Board receives is similar to the unredacted version. Easter answered that it was the same and that the only thing that is redacted is the names of the officers and citizens. Easter explained that he can provide the spreadsheet sooner but the screening process would have to be something that the Board comes up with. Fowler said that the Department should provide the spreadsheet two weeks prior to the meeting and that will give the Board members a chance to review it and use that information to formulate additional questions. Fowler said that this will give the Board more time to identify complaints that they would like to review. Puritty said that there is a miscommunication because the problem isn't that there isn't enough time to review the spreadsheet provided it is that she would like more information on some of the complaints but does not want to use up an executive review session on complaints that might not merit the entire Board's time. Fowler said that receiving the spreadsheet sooner will allow the Board to review cases and develop further questions about complaints. Fowler explained that Board members can not discuss among themselves and come to resolution by email but they can raise questions and submit them to staff to be answered at the upcoming meeting. Deputy Chief Pinkston asked that the Board members keep in mind that all of the duties they ask for are additional duties placed on staff on top of the duties they are already assigned, the Department has not been given additional staff for the Board. Fowler said that the Board is not intending to make large demands on staff, that they would just be looking for brief answers to questions, such as why an investigation took an extended period of time to complete.

Puritty then asked if citizens can ask the Department to audit their file in the RMS and tell them everyone that has reviewed their file. Easter said that he does not know if that request can be completed for a citizen. Magana answered that the policy would have to be reviewed to determine if it was possible to fulfill such a request. Easter continued by saying that the Department can do internal audits but he is unsure if those audits can be released to the public. Rojas added that the Department could not do that because then anyone could call and ask who had been viewing their file. Easter said that it definitely would not be required for the Department to provide that information. Easter further explained that if a citizen made a complaint against an officer and it was determined that there was officer misconduct then the citizen would find out because they would receive a conclusion that their complaint had been sustained.

Deputy Chief Pinkston said that the Board had mentioned that the Chief was not bringing cases to them for review. Pinkston reminded the Board that soon after the Board's creation they complained about only reviewing cases picked by the Department and wanted to choose their own cases for review and the resolution of that complaint was allowing the Board to choose the cases that they wanted to review. Fowler explained that this was not a criticism, he was just stating that recently the Chief has not been asking the Board to review cases.

## 8. Adjourn

Puritty made a motion to conclude the meeting, seconded by Bender. The meeting adjourned at 6:15 P.M.

The next meeting will be held on July 28<sup>th</sup>, at 4:00 P.M. in the City Council First Floor Boardroom (455 N. Main St, Wichita, KS 67202).

*Minutes respectfully submitted by Zachary Kester, Administrative Aide, Wichita Police Department.*

### *Wichita Citizens Review Board Record of Recommendations/Motions*

Month	Recommendation/Motion
January 2021	<ul style="list-style-type: none"><li>• None made at the meeting.</li></ul>
February 2021	<ul style="list-style-type: none"><li>• Approve the resolution presented by Dr. Walt Chappell, Racial Profiling Advisory Board of Wichita. Motion by Sims; second by Harris. Motion passed.</li><li>• Issue a reminder to the PSB stressing the importance of following up on complaints with the complainant(s) in accordance with WPD Policy 901. Motion by Bender; Second by Lopez. Motion passed.</li><li>• Recommendations be put forth in a formal document which includes recommendations, date and time passed. Motion by Sims; Second by Ailslieger. Motion passed.</li></ul>
March 2021	<ul style="list-style-type: none"><li>• None made at the meeting.</li></ul>
April 2021	<ul style="list-style-type: none"><li>• Motion to have WPD leadership come and present about how the WPD reaches out to learn from other Police Agencies, and what other Police Agencies asked to learn from the WPD.</li><li>• Request to have a discussion at a future meeting about the pros and cons of confidentiality provisions the police disciplinary procedures.</li></ul>
May 2021	<ul style="list-style-type: none"><li>• Requested to start reviewing WPD policies. Mainly those policies that are about how WPD interacts with the community.</li></ul>
June 2021	<ul style="list-style-type: none"><li>• Requested that City Manager direct staff to provide for YouTube streaming of meetings.</li><li>• Also requested that the agenda for CRB meetings be posted no later than the Monday prior to a scheduled Thursday meeting.</li></ul>

July 2021	<ul style="list-style-type: none"> <li>Recommended that a statement be added before executive session asking that all those that cannot stay for executive session exit the room quickly.</li> <li>Recommended that there be a designated time for the board to ask questions and after the board has finished asking questions, then the public will be allowed to ask questions.</li> </ul>
August 2021	<ul style="list-style-type: none"> <li>Deferred making a recommendation made for breakdown of legal expenses pertaining to law enforcement personnel.</li> <li>Motion passed regarding accomplishments of Citizen Review Board to be published with amended corrections.</li> <li>Motion passed asking the Board to adopt recommendation to number 2 in proposed policy recommendations.</li> <li>Recommendation to review citation data from Dr. Birzer be placed on September agenda.</li> </ul>
September 2021	<ul style="list-style-type: none"> <li>Recommendation to post the paper on the Boards accomplishments to the website.</li> </ul>
October 2021	<ul style="list-style-type: none"> <li>Motion failed regarding asking the city to provide a breakdown of legal expenses pertaining to law enforcement personnel.</li> </ul>
December 2021	<ul style="list-style-type: none"> <li>None made at the meeting.</li> </ul>
January 2022	<ul style="list-style-type: none"> <li>There was no meeting.</li> </ul>
February 2022	<ul style="list-style-type: none"> <li>Motion made to have a special meeting to further review 21PSB-5114 and connecting cases, with a representative from PSB and command staff. This meeting will be on March 10, 2022.</li> </ul>
March 10, 2022	<ul style="list-style-type: none"> <li>None made at this meeting.</li> </ul>
March 24, 2022	<ul style="list-style-type: none"> <li>Motion made to have a special meeting to continue review of 21PSB-5114 and connecting cases, with a representative from PSB and command staff. This meeting will be on March 31, 2022.</li> </ul>
March 31, 2022	<ul style="list-style-type: none"> <li>Motion made to have a special meeting to discuss the issuance of a report on 21PSB-5114 and connecting cases. This meeting will be on April 5, 2022.</li> </ul>
April 5, 2022	<ul style="list-style-type: none"> <li>Motion to accept, approve and release the Board's report on their review of 21PSB-5114 and connecting cases.</li> </ul>
April 28, 2022	<ul style="list-style-type: none"> <li>Motion to accept the submission of a protocol that states: The CRB requests that the WPD report to the CRB monthly a listing of new PSB cases involving allegations of Conduct Unbecoming, Excessive Force or allegations involving Departmental Integrity. Departmental Integrity allegations relate to claims of false statements by officers or supervisors involving their official duties. The purpose of this request</li> </ul>



	is to allow those cases to be tracked and pulled for review on completion of the PSB investigation. The disclosure should be sufficient to allow for an understanding of the allegation made. Any CRB review of the cases identified will occur only after the cases have been closed.
May 26, 2022	<ul style="list-style-type: none"> <li>• Motion to invite a member of the District Attorney's office to come and speak with the Board about Brady/Giglio.</li> </ul>
June 23, 2022	<ul style="list-style-type: none"> <li>• None made at this meeting.</li> </ul>